

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

20 MAY -1 PM 1:57 *AZ*

CLERK-ALBUQUERQUE

MIKE S. W. OCHIENO

Plaintiff,

v.

CIV NO. 20cv417 JFR

SANDIA NATIONAL LABORATORIES,

Defendant.

**NOTICE OF APPEAL AND COMPLAINT FOR DISCRIMINATION, BREACH OF IMPLIED
CONTRACT, INTENTION INTERFERENCE WITH CONTRACT ACTUAL RELATIONS AND
WRONGFUL TERMINATION**

Plaintiff Mike S. Ochieno, for Complaint states as follows:

1. Mike S. Ochieno ("Plaintiff" or "Ochieno") is a resident of the state of New Mexico and was at all relevant times employed by Sandia National Laboratories. He is African American.
2. Upon information and brief, Sandia National Laboratories ("Sandia") is managed and operated by Sandia Corporation and located in Albuquerque New Mexico.
3. Ochieno was employed by Sandia since September 15, 2015 as a Principal Lean Six Sigma Black Belt at the Principal Level.
4. Ochieno was qualified for his position.
5. Ochieno performed the duties of his position well

Additional: Plaintiff Mike S. Ochieno, for Complaint states as follows

6. Ochieno's managers engaged in unauthorized access to his computer, deletion of his work files and removing him from work projects. Such conduct was discriminatory and based upon Ochieno's race.

Count 1

BREACH OF IMPLIED CONTRACT

7. Plaintiff incorporates each preceding paragraph.
8. Sandia published and distributed to every employee personal manual that set out specific standards that would apply to disciplinary matters and provide for progressive discipline
9. Specifically, Sandia's personnel manual provided that it would provide progressive discipline to any employee before termination and that termination would be only for good cause.
10. Sandia established a pattern over many years of providing progressive discipline to all employees.
11. Sandia managers stated on numerous occasions that all employees were entitled to a progressive discipline and would not be terminated except for good cause.
12. Sandia's actions gave rise to an implied contract that termination would be preceded by progressive discipline and for good cause.
13. Ochieno reasonably expect and believe his employment, discipline and termination would be in accordance with the personnel manual and past practices regarding progressive discipline.
14. Sandia, however, only documented problems with Ochieno after he confronted his managers about his project being stalled.
15. Sandia failed to follow its policies in violation of implied contract created by the personnel manual, past practices and the statements of its managers.
16. Ochieno was damaged by failure of Sandia to fallow its own policies

COUNT 11

RACE DISCRIMINATION

17. Plaintiff incorporates each preceding each preceding paragraph
18. Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC).
19. Plaintiff received a right to sue letter from the EEOC
20. Plaintiff has exhausted his administrative remedies.
21. Sandia Intentionally discriminated against Plaintiff based on his race, which is prohibited by Title of Civil Rights Act of 1964 (Title VII)
22. Plaintiff was qualified for his position and performed his position well.
23. Plaintiff was subjected to discrimination, which resulted in his eventual termination because he is African American.
24. Plaintiff was the only African-American in his department
25. The termination caused damage to plaintiff including future and past lost wages and benefits, lost retirement benefits, lost future earning capacity, emotional distress and other damages to be proved at trial.

COUNT 111

INTENTAL INTERFERENCE WITH CONTRACTUAL RELATIONS

26. Plaintiff incorporates each preceding paragraph

COUNT 111

INTENTAL INTERFERENCE WITH CONTRACTUAL RELATIONS

27. Defendant knew that plaintiff had a contract of employment with Sandia.

28. According to policies at Sandia, Ochieno had a duty to report complaints he had

29. Defendant did not have the authority to target employee who made complaints.

30. Targeting employee who criticized their supervisors was against the policies at Sandia.

31. Defendant breached its contract of employment with Plaintiff.

32. Plaintiff was damaged by Defendant's unlawful actions.

WHEREFORE, Plaintiff requests judgement in his favor for damages in an amount to be proved, attorney fee and costs and such other relief the court deems just. The Plaintiff may request trial by jury for some pleadings, Rule 38.

Respectfully submitted,

By: *Mike s. Ochieno.*

Mike S. W. Ochieno

Pro se

P.O. Box 25797

Woodbury, MN 55125

Ph # 96510270-9797

Email: mochieno04@yahoo.com

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

MIKE S. W. OCHIENO

Plaintiff,

v.

CIV NO. _____

SANDIA NATIONAL LABORATORIES,

Defendant.

Dear Clerk,

April 30, 2020

Please note the agent address and items below;

1. Address: Sandia National Laboratories Agent Address: Corporation Service Company, 123 E. Marcie St, Suite 101, Santa-Fe New Mexico 87501
2. Complaint
3. Summons
4. MoneyGram #R108676745353 Amount \$400:00
5. Copy of letter from EEOC: Dismissal And Notice Of Rights

Thank you,

Respectfully,

Mike S.W. Ochieno

Mike S. W. Ochieno

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Mike S. Ochieno**
P.O. Box 25797
Woodbury, MN 55125

From: **Albuquerque Area Office**
505 Marquette, N.W.
Suite 900
Albuquerque, NM 87102



On behalf of person(s) aggrieved whose identity is
 CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

543-2016-00721

Shawanda L. Bell,
Investigator

(505) 738-6735

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

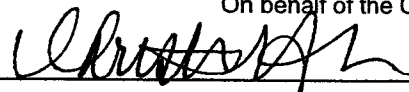
- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission



Christina Vigil Frazier,
Acting Director

2/7/20

(Date Mailed)

Enclosures(s)

cc:

Machelle Karler
Manager, EEO/Affirmative Action
SANDIA NATIONAL LABORATORIES
P.O. Box 5800 MS 1458
Albuquerque, NM 87185

**INFORMATION RELATED TO FILING SUIT
UNDER THE LAWS ENFORCED BY THE EEOC**

*(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other
provisions of State law may be shorter or more limited than those described below.)*

**PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA),
the Genetic Information Nondiscrimination Act (GINA), or the Age
Discrimination in Employment Act (ADEA):**

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was mailed to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Courts often require that a copy of your charge must be attached to the complaint you file in court. If so, you should remove your birth date from the charge. Some courts will not accept your complaint where the charge includes a date of birth. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit **before 7/1/10** -- not 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.